



OTP Weekly Briefing

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HIGHLIGHTS: * ICC PROSECUTOR OPENS INVESTIGATION REGARDING LIBYAN SITUATION AND PUTS INDIVIDUALS ON NOTICE
*** CHAMBER CONFIRMS CHARGES IN BANDA/JERBO CASE**
*** JUDGES ISSUE SIX SUMMONSES TO APPEAR IN THE KENYAN SITUATION**

PREVIEW

- Trial Chamber I issues public version of its decision on the abuse of process, p.2

Prosecutor opens investigation in Libya

3 March - Following the unanimous decision by the UN Security Council to refer the situation in Libya to the Prosecutor, the Office of the Prosecutor [announced](#) on 3 March its decision to open an investigation into alleged crimes against humanity committed in Libya since 15 February.

"During the coming weeks, the Office will investigate who are those most responsible for the most serious crimes committed in Libya. The Office will then present its evidence to the Judges and they will decide on whether or not to issue arrest warrants. This is a court of justice".

The Prosecutor stated that the Office had so far identified the worst incidents as taking place in Benghazi, on 15 February 2011; in Misratah, Al-Bayda, Derna, Zenten, Ajdabiya, on 16 February 2011; in Misratah, on 18 February 2011; and in Tripoli and Az-Zawiyah, on 20 February 2011 [see the map of the incidents in the background document annexed].

The OTP identified some individuals with formal or *de facto* authority, who commanded and had control over the forces that allegedly committed the crimes. They are Mummar Al Gaddafi, the chairman of the Revolutionary Command Council, and his inner circle; the Minister of Foreign Affairs; the Head of Regime Security and Military Intelligence; the Head of Gaddafi's Personal Security; and the Head of the Libyan External Security Organization [see the structure of the individuals that could be investigated in the background document annexed].

The Prosecutor further stressed: *"We hereby put them on notice: if forces under their command commit crimes, they could be held responsible. We have information that some opposition groups also have weapons. If they commit crimes, their leaders will also be investigated. We will act with impartiality. Any person can contact our Office to clarify his or her responsibility"*.

The OTP is liaising with the UN, the African Union, the Arab League, as well as States. Additionally, the Prosecutor will also request information from other sources including from Interpol, which has agreed to provide assistance. On 4 March, Interpol issued a global [alert](#) encouraging member states' police forces to share information requested by the ICC Prosecutor via Interpol.

The Chairwoman of the EU Parliament Subcommittee on Human Rights, Heidi Hautala, welcomed this announcement, emphasizing: *"this decision comes not a moment too soon. While the international community has taken its time to debate various options to effectively stop the atrocities in Libya, I welcome the decisive action by the Prosecutor of the ICC [...]. Lending full support to the Court and its Prosecutor is vital. It is vital not only by the 114 States Parties to the Court, but by the international community as a whole. This is a responsibility we all share"*.

As the UN General Assembly adopted a Lebanese-tabled resolution suspending Libya from the Human Rights Council on 1 March, the UK Foreign Secretary, William Hague, [stated](#): *"Suspension from the Council puts yet more pressure on the Libyan regime to listen to the clear message of the international community; crimes will not go unpunished and will not be forgotten; there will be a day of reckoning and the reach of international justice is long"*.

ICC Judges confirm charges in the case of *The Prosecutor v Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo*

6 March - Pre-Trial Chamber I issued a [decision](#) confirming all of the charges levied by the Office of the Prosecutor against Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus. The Chamber found that “*there are substantial grounds to believe that both the objective and the subjective elements of the crimes charged in Counts 1, 2 and 3 are fulfilled.*” The three counts are: violence to life, pursuant to Article 8(2)(c)(i); intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission, pursuant to Article 8(2)(e)(iii); and pillaging, pursuant to Article 8(2)(e)(v).

The decision has committed Banda and Jerbo for trial. A date for the trial has not yet been set. By prosecuting those who attack peacekeepers, the Court is contributing to African peace efforts and strengthening the protection of peacekeepers.

Six summonses to appear issued by the Judges in the Kenyan situation

8 March - Pre-Trial Chamber II, by Majority, issued six summonses to appear for [William Ruto, Henry Kosgey, Joshua Arap Sang, Francis Muthaura, Uhuru Kenyatta and Mohammed Hussein Ali](#). The Chamber requested them to appear before the Court on 7 April 2011.

Based on their findings, the Judges issued the summonses subject to the following four conditions:

- “(i) to have no contact directly or indirectly with any person who is or is believed to be a victim or a witness of the crimes for which the suspects have been summoned;
- (ii) to refrain from corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, or tampering with or interfering with the Prosecution’s collection of evidence;
- (iii) to refrain from committing crime(s) set forth in the Statute;
- (iv) to attend all required hearings at the Court”.

The six suspects have made public statements [confirming](#) that they would voluntarily appear before the Court. The Office believes these two cases will have a crucial preventative impact and send a clear message: those who seek to gain or remain in power through violence will be held accountable.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented five filings in the various cases and conducted two missions in two countries.

I.1. Situation in the [Democratic Republic of the Congo \(DRC\)](#)

This situation was referred by the DRC in March 2004. The OTP opened its investigation in June 2004, focusing first on Ituri where some of the most serious crimes had been committed by the main armed groups. Four arrest warrants have been issued against [Thomas Lubanga Dyilo](#) and [Bosco Ntaganda](#), leaders of the UPC, and [Germain Katanga](#) and [Mathieu Ngudjolo Chui](#), leaders of the FNI and FRPI. The trial of [Thomas Lubanga Dyilo](#) began on 26 January 2009. The trial of Germain [Katanga and Mathieu Ngudjolo Chui](#) began on 24 November 2009; on 8 December 2010, the Prosecution concluded the presentation of its case. [Bosco Ntaganda](#) is at large. In September 2008, the OTP announced the start of its investigation into alleged crimes in the Kivus. On 28 September 2010 the judges issued an arrest warrant under seal against Callixte Mbarushimana, Executive Secretary of the FDLR. He was arrested on 11 October 2010 in Paris, and surrendered to the Court on 25 January 2011. The Confirmation of Charges Hearing is set for 4 July 2011.

2 March - Trial Chamber I [issued](#) the public redacted version of its decision rejecting the defense’s motion that the Prosecution had abused the process in the Lubanga trial. The Chamber found that “*accepting, for the sake of argument, the defence submissions at their highest, this is not a situation in which, as an exercise of judgment, a stay of proceedings is called for. The alleged failings on the part of the prosecution can be addressed as part of the ongoing trial process.*”

3 March - The OHCHR published a [report](#) of a high-level panel on sexual violence in the DRC. Pointing out sexual violence committed by the FDLR the panel found that widespread sexual violence perpetrated with impunity by illegal armed groups

as well as national security forces has led to a widely noted increase in sexual violence perpetrated by civilians as a result of war. In the Kivu Provinces victims' priority is the restoration of lasting peace and security. The Panel recommends that demobilization of armed groups should be given the highest priority.

I.2. Situation in [Uganda](#)

This situation was referred by Uganda in January 2004. The OTP opened its investigation in July 2004. Five arrest warrants have been issued against [top leaders of the Lord's Resistance Army \(LRA\)](#): Joseph Kony, Vincent Otti (allegedly killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant has been withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Since early 2008, the LRA is reported to have killed more than 2,000, abducted more than 2,500 and displaced well over 300,000 in DRC alone. In addition, over the same period, more than 120,000 people have been displaced, at least 450 people killed and more than 800 abducted by the LRA in Southern Sudan and the Central African Republic.

1 March - US Secretary of State Hilary Clinton, [testifying](#) before the US House of Representatives Foreign Relations Committee, talked of her regret that the LRA leadership has so far escaped accountability, but committed the US Administration to continue its strong focus on action against the LRA and expressed appreciation for support from allies and partners in this context. She described the LRA [leader] as *"one of the great criminals of the last fifty years, who has pillaged, raped, abducted, kidnapped killed in every way known, in the worst of barbarism."*

3 March - A [bill](#) "Sudan Cessation of Support for the Lord's Resistance Army Certification Act of 2011" as [introduced](#) in the US Congress requires the US Administration to certify to Congress that the Sudanese Government is "no longer engaged in training, harboring, supplying, financing, or supporting in any way the Lord's Resistance Army, its leader Joseph Kony, or his top commanders" before Sudan could be removed from the State Department's state sponsor of terrorism list.

I.3. Situation in [Darfur, the Sudan](#)

This situation was referred by the UN Security Council in March 2005. The OTP opened its investigation in June 2005. Three arrest warrants have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. The confirmation of charges hearing was held on 19-30 October 2009. On 8 February 2010 the Pre-Trial Chamber issued a decision declining to confirm the charges. The OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence. On 25 May the PTC Chamber issued its ['Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan'](#) in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The [confirmation of charges hearing](#) for Banda and Jerbo took place on 8 December 2010.

26 February - The GoS has suspended the work of the humanitarian agency Catholic Relief Services in West Darfur State, accusing it of distributing Bibles. Mohamed Awad, head of the government's Humanitarian Aid Commission in the state, [stated](#): *"The work of CRS has been suspended in West Darfur after there was an accusation that they had been distributing Bibles"*. Awad said Bibles had been found in refugee camps and schools and the governor had ordered an investigation which showed they had been handed out by CRS. CRS, whose programmes include education, and water and sanitation, declined to comment but said its operations were continuing in Khartoum and south Sudan.

26 February - GoS Justice Minister Mohamed Bushara Dousa [said](#) the GoS would seek to terminate the mandate of the UN independent expert on Sudan, Mohamed Chande Othman, stressing that his country does not need any form of monitoring. The expert's mandate will end in May unless it is renewed.

1 March - Hundreds of IDPs in a camp near Zalingei [protested](#) against continuing government attacks in North Darfur and east of Jebel Marra and condemned the decision of the South Darfur Governor to expel Medecins du Monde from the region. They called for the urgent return of humanitarian organizations that had been expelled.

I.4. Situation in the [Central African Republic \(CAR\)](#)

This situation was referred by the CAR in December 2004. The OTP opened its investigation in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba Gombo](#) for crimes committed in 2002-2003. The [confirmation of charges hearing](#) was held on 12-15 January 2009. On 15 June 2009, Pre-Trial Chamber II rendered its confirmation of charges decision. On 18 September, the case was referred to Trial Chamber III. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005. The trial started on 22 November 2010. The Defence decided not to appeal the 17 December Decision on the review of detention of Mr. Jean-Pierre Bemba, pursuant to the Appeals Judgment of 19 November 2010.

I.5. [Kenya](#)

The Office made its examination of the post-election violence of December 2007-January 2008 public in February 2008. On 9 July 2009, the African Union Panel of Eminent African Personalities, chaired by Kofi Annan, announced the [submission to the OTP of a sealed envelope containing a list of persons allegedly implicated and supporting materials previously entrusted to Mr. Annan by the Waki Commission](#). On 5 November the Prosecutor informed President Kibaki and Prime Minister Odinga of his view that crimes against humanity had been committed and of his duty, in the absence of national proceedings, to act. Both the President and the Prime Minister committed to cooperate with the Court. On 26 November the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation, noting that: 1,220 persons had been killed; hundreds raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 injured as part of a widespread and systematic attack against civilians. On 31 March the Pre-Trial Chamber authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May and his second visit 1-3 December. The Prosecutor submitted two applications for summonses to appear regarding six individuals (William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali) on 15 December 2010. These individuals are alleged to be most responsible in accordance with the evidence. The six individuals are formally committed to appear before the Judges if the Chamber accepts the OTP's applications.

1 March - 37 civil society organizations from across Africa wrote a [letter](#) urging the governments of Gabon, Nigeria and South Africa, as States Parties to the ICC and as members of the UN Security Council, to reconsider their support of Kenya's Article 16 deferral request. The letter notes the distinction between an Article 16 deferral request to the Security Council and an Article 19 admissibility challenge, which would be presented before the Court. The letter also notes that the African Union's support for the deferral of the Kenya situation undermines its credibility, particularly at a time when election violence is escalating in other areas of the continent, such as Côte d'Ivoire.

4 March - Kenya's Vice President Kalonzo Musyoka, led a group of six special envoys to lobby UN Security Council members to accept a request for an Article 16 deferral of the ICC process. Both US Ambassador in Nairobi, Michael Ranneberger, and UK High Commissioner to Kenya, Rob Macaire, have stated that the US and UK would not support a deferral motion.

I.6. [Libya](#)

This situation was referred by the UN Security Council on 26 February 2011 by [Resolution 1970](#) (2011). As per the Rome Statute, the Prosecutor shall proceed with an investigation unless there is no reasonable basis to believe that crimes falling under the ICC jurisdiction have been committed. Following a preliminary examination of available information, the Prosecutor [decided](#) to open an investigation on 3 March 2011.

II. Preliminary Examinations

Statistics on [Article 15 Communications](#) and other preliminary examination activities.

57 communications that may fall under Article 15 were received by the Office in the month of February. 51 of these communications were manifestly outside the jurisdiction of the Court; 6 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 9,094, of which 4,195 were manifestly outside the jurisdiction of the Court.

A preliminary examination is the first phase of the Office of the Prosecutor activities, in order to assess if an investigation should be opened. It is a phase during which the Office first assesses the jurisdiction of the Court, whether crimes falling under the ICC jurisdiction may have been, or are possibly being, committed in a given situation; if the conditions are met, whether genuine investigations and prosecutions are being carried out by the competent authorities in relation to these crimes; and, as a third step, whether the possible opening of an investigation by the Prosecutor would not go against the [interests of justice](#). During this phase, and in accordance with Article 15, the Office

proactively evaluates all information on alleged crimes from multiple sources, including “communications” from individuals and parties concerned. The triggering of a preliminary examination does not imply that an investigation will be opened.

II.1. [Afghanistan](#)

The Office made its examination public in 2007. It examines alleged crimes within the jurisdiction of the Court by all actors involved. The OTP met outside Afghanistan with Afghan officials and organizations. The OTP sent requests for information to the Government of Afghanistan and has not yet received an answer.

1 March - The International Security Assistance Force (ISAF) is looking into [allegations](#) of civilian casualties following an insurgent attack on a Forward Operating Base in Darah-Ye Pech district, Kunar province, which reportedly resulted in about 65 civilian casualties.

II.2. [Colombia](#)

The Office made its examination public in 2006. It examines alleged crimes within the jurisdiction of the Court and investigations/proceedings conducted in Colombia against the allegedly most serious perpetrators, paramilitary leaders, politicians, guerrilla leaders and military personnel. The Office is also analyzing allegations of international networks supporting armed groups committing crimes in Colombia.

II.3. [Georgia](#)

The Office made its examination public on 14 August 2008. The Georgian Minister of Justice visited the OTP. Russia, a State not Party to the Statute, has sent 3,817 communications to the OTP. The Prosecutor requested information from the Governments of Russia and Georgia on 27 August 2008. Both the Russian and Georgian authorities responded. The Office conducted a visit to Georgia in November 2008 and to Russia in March 2010. A second mission to Georgia was conducted in June 2010.

II.4. [Palestine](#)

On 22 January 2009, the Palestinian National Authority lodged a declaration with the Registrar under Article 12(3) of the Rome Statute which allows States not party to the Statute to accept the Court’s jurisdiction. The OTP will examine issues related to its jurisdiction: first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; and second whether crimes within the Court’s jurisdiction have been committed. The Office will also consider whether there are national proceedings in relation to alleged crimes. A delegation from the Palestinian National Authority, and Representatives of the Arab League visited the Court on 15-16 October 2009 to present a report in support of the PNA’s ability to delegate its jurisdiction to the ICC. On 11 January, the OTP sent a [letter](#) summarizing its activities to the United Nations at their request. On 3 May, the OTP published a “[Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements](#).” The OTP has not made any determination on the issue.

II.5. [Côte d’Ivoire](#)

The Court has jurisdiction over the situation in Côte d’Ivoire by virtue of an Article 12(3) declaration submitted by the Ivorian Government on 1 October 2003. The declaration accepts the jurisdiction of the Court as of 19 September 2002. On 17-18 July 2009, high-level representatives of the OTP visited Abidjan.

3 March - A new ICG [Report](#) entitled “Côte d’Ivoire: Is War the Only Option?” recommended to the Prosecutor to remind all Ivorian parties, including commanders of the FDS-CI, militia leaders and commanders of the Forces nouvelles, that they will be liable for acts committed by persons placed under their authority or acting upon their messages of hate and violence.

4 March - In a press [statement](#) on the situation in Côte d’Ivoire, US Secretary of State Hillary Clinton affirmed: “*The United States calls for an immediate end to the violence. Military leaders, regime officials, and others responsible for directing or committing violent acts against civilians will have to answer for their actions*”.

5 March - Deputy Prosecutor Fatou Bensouda made a [statement](#) condemning attacks against unarmed civilians in Côte d’Ivoire. The Deputy Prosecutor reminded the perpetrators that ICC policy paid special attention to crimes against women, children and peacekeepers. She described the deaths of the female marchers as appalling and warned that if the situation got worse, the ICC could move very fast.

II.6. [Guinea](#)

The Office made its examination of the situation in Guinea public on 14 October 2009. Guinea is a State Party to the Rome Statute since 14 July 2003 and, as such, the ICC has jurisdiction over war crimes, crimes against humanity and genocide possibly committed in the territory of Guinea or by nationals of Guinea, including killings of civilians and sexual violence. The Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry in accordance with Article 15 of the Statute. In January 2010, OTP high level representatives held consultations with President Compaore of Burkina Faso, mediator for the contact group on Guinea, and President Wade of Senegal to ensure that they are informed of its work. From 15 to 19 February 2010, the OTP sent a mission to Guinea, led by Deputy Prosecutor Fatou Bensouda, in the context of its preliminary examination activities. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. A third OTP mission, lead by Deputy Prosecutor Bensouda, went to Conakry from 8 to 12 November 2010, and met with President Sékouba Konaté, Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.7. [Nigeria](#)

The Office made its examination of the situation in Nigeria public on 18 November 2010. Nigeria is a State Party to the Rome Statute since 27 September 2001. The Office has been analyzing the alleged crimes committed in Central Nigeria since mid-2004 and is looking forward to engaging constructively with the Nigerian authorities on the issue.

II.8. [Honduras](#)

The Office made its examination of the situation in Honduras public on 18 November 2010. Honduras is a State Party to the Rome Statute since 1 July 2002. The Office has received many communications on crimes linked to the coup of June 2009. There were different allegations, mostly regarding alleged massive cases of torture and more than a thousand people being arrested in one day. The Office met with the Honduras Minister Counsellor in The Hague on 22 November, who provided relevant information and promised their full cooperation.

II.9. [Republic of Korea](#)

The Office made its examination of the situation in the Republic of Korea public on 6 December 2010. Korea is a State Party to the Rome Statute since 13 November 2002. The Office of the Prosecutor has received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Office is currently evaluating if some incidents constitute war crimes under the jurisdiction of the Court. These incidents are: a) the shelling of Yeonpyeong Island on the 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and b) the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

III. Cooperation – Galvanizing Efforts to Arrest

1 March - UNESCO's 2011 [Global Monitoring Report](#) warns that armed conflict exposes 28 million children to widespread rape and other sexual violence, targeted attacks on schools and other human rights abuses. The report recommends that in areas where the level of human rights violations may warrant consideration as a war crime or crime against humanity, the Security Council should be more active in referring cases to ICC. It further recommends that the ICC should act in an advisory capacity to an International Commission on Rape and Sexual Violence to be established by the UN Security Council. Any evidence collected by such a commission should be handed over to the ICC for assessment.



Delgado, who will join the Prosecution team in the Libya situation.

7-8 March - Prosecutor Moreno-Ocampo visited Madrid. He gave the inaugural class of the new Masters on Governance and Human Rights at the Universidad Autonoma de Madrid. The Prosecutor further met with the Spanish Minister of Foreign Affairs and Cooperation, Trinidad Jiménez Herrera, in order to update the Minister on the ongoing activities of the Office, as well as to discuss on ways to strengthen the cooperation between Spain and the Court. The Prosecutor also held a working group meeting with senior officers from the Spanish Ministry of Foreign Affairs in order to update them on the activities of the Office. Additionally, the Spanish Attorney General, Candido Conde-Pumpido, and the Chief Prosecutor of the Spanish National Court, Javier Zaragoza, agreed to temporarily second Prosecutor María Dolores



9 March - Prosecutor Moreno-Ocampo met with the UK Minister of Europe David Lidington in The Hague. The Prosecutor updated the Minister on the ongoing situations and cases of the Office. The Minister [reiterated](#) the UK's offer to do all it could to support the ICC in its investigation into the situation in Libya. Minister for Europe David Lidington stated: *"The UK encourages the wider international community to cooperate with the ICC in the exercise of its independent judicial functions. This is a reminder to the Libyan regime that anyone responsible for abuses or contemplating further crimes knows that there will be a day of reckoning."*

IV. Upcoming Events

- 15 March - Deputy Prosecutor participates in the international colloquium "Women's rights, Migrant women's rights and international humanitarian law", Dakar
- 21 March - Prosecutor delivers keynote speech at Facing History and Ourselves event, London
- 25 March - Deputy Prosecutor participates as a featured speaker at the American Society of International Law Annual Meeting, Washington
- 6-7 April - OTP holds its bi-annual roundtable meeting with NGOs, The Hague
- 11-13 April - Deputy Prosecutor participates in the Expert meeting on complementarities between international refugee law, international criminal law, and international human rights law, organized by ICTR and UNHCR, Arusha

** This document reflects the views of the Office of the Prosecutor of the ICC. For more information, contact Mrs. Olivia Swaak-Goldman, International Cooperation Adviser in the Office of the Prosecutor, at Olivia.Swaak-Goldman@icc-cpi.int*